$200,000 to Edward Kong and was anxious to see that the interest in the land which she had been promised 50% share was safeguarded by some document. She had no reason whatever to doubt or suspect Edward Kong as he had promised her 50% share in the property. She was urged to sign quickly and did so believing him and relying on Edward Kong's promise to her.

Viscount Dilhorne in the *Saunders* case, *supra*, was of the view that the person signing must not have been careless when signing. The person "who signs the document must exercise reasonable care and what amounts to reasonable care will depend on the circumstances of the case and the nature of the document which it is thought is being signed." Byles J. in *Foster* v. *Mackinnon*,[2] said —

"at least if there be no negligence, the signature so obtained is of no force. And it is invalid, not merely on the ground of fraud, if fraud exists, but on the ground that the mind of the signer did not accompany the signature; in other words, that he never intended to sign, and therefore in contemplation of law never did sign, the contract to which his name is appended."

For all these reasons and taking all the conditions prevailing at the time when Madam Tan signed the document, in my view she had in so signing acted reasonably and prudently in the circumstances. In my judgment Madam Tan has successfully established the plea of *non est factum*. In view of my finding, the necessity of considering the other defences raised by Madam Tan does not arise. The plaintiffs' claim is dismissed with costs.

Claim dismissed.

Solicitors: *Rodyk & Davidson; J.B. Jeyaretnam & Co.*

TEO BOON HONG v. TAN EWE WAH

[D.C.A. (Sinnathuray J.) September 15, 1980]
[Singapore — District Court Appeal No. 93 of 1979]

Landlord and Tenant — Rent-controlled premises — Breach of regulations — Landlord convicted — Claim for possession — Scope of s. 15(1)(h) of Control of Rent Act (Cap. 266) — Environmental Public Health (Public Cleansing) Regulations, 1970, reg. 26(1)(a) — Environmental Public Health (Food Establishments) Regulations, 1973, reg. 15.

The appellant in this case purchased a rent-controlled premises in 1960. In 1964 he obtained an eating house licence to operate a coffee shop at the premises. In 1966 he let the premises including the business to the respondent's husband at a monthly rent of $220. Upon the death of the respondent's husband, in April 1975, the appellant acknowledged the respondent as the tenant.

In November 1976, the appellant pleaded guilty in a Magistrate's Court on charges of having committed offences under Regulation 26(1)(a) of the Environmental Public Health (Public Cleansing) Regulations 1970. On October 26, 1978, he pleaded guilty on a charge of having committed an offence under regulation 15 of the Environmental Public Health (Food Establishments) Regulations, 1973. He was convicted and fined for all the said charges. The appellant said the only reason he attended court, and pleaded guilty on the three occasions was because the notices were issued in his name. They were handed to him by one of the stall operators in the premises.

The appellant claimed possession of the premises under section 15(1)(h) of the Control of Rent Act (Cap. 266). At the close of the appellant's case, counsel for the respondent elected not to call evidence for the defence and made a submission of no case to meet. The learned District Judge dismissed the appellant's claim and hence this appeal.

Held, allowing the appeal: the appellant had, at the close of his case, made out a *prima facie* case, which in the event, the respondent not having given evidence, entitled the appellant to judgment.

Cases referred to:-

(1) *Tay Sai Hiang* v. *Tan Ee Keok* [1968] 1 M.L.J. 234.

(2) *Ho Tong Cheong & Ors.* v. *Oversea-Chinese Banking Corporation Ltd.* [1967] 2 M.L.J. 70.

DISTRICT COURT APPEAL.

Joseph Ang for the appellant.

Mah Kok Weng for the respondent.

Cur. Adv. Vult.

Sinnathuray J.: This appeal arises from a claim by the landlord (appellant) against the tenant (respondent) for possession of a rent-controlled premises, No. 281 Changi Road. The facts are these.

The appellant purchased the premises in 1960. In 1964 he obtained an eating house licence to operate a coffee shop at the premises. In 1966 he let the premises including the business to the respondent's husband at a monthly rent of $220. Upon the death of her husband, in April 1975, the appellant acknowledged the respondent as the tenant.

At the hearing in the District Court, the appellant gave evidence that in November 1976, on two occasions, he pleaded guilty in a Magistrate's Court on charges of having committed offences under Regulation 26(1)(a) of the Environmental Public Health (Public Cleansing) Regulations 1970, namely that on October 16 and November 5 respectively, he did permit the footway of the premises to be obstructed with tables and chairs. He further gave evidence that on October 26, 1978, he pleaded guilty on a charge that on October 6, 1978 he did place outside the food establishment tables and chairs in connection with the sale of food, an offence under Regulation 15 of the Environmental Public Health (Food Establishments) Regulations, 1973. On each of the three occasions he was convicted and a fine imposed.

In his cross-examination the appellant said he did not permit anyone to place tables and chairs as alleged in the first two notices. He also denied having placed tables and chairs as alleged in the third notice. He said the only reason he attended court, and pleaded guilty on the three occasions was because the notices were issued in his name. They were handed to him by one of the stall operators in the premises.

The one other witness for the appellant, at the hearing, was a Public Health Inspector who gave evidence of facts that made out the charge set out in the third notice. He said he ascertained the licensee of the coffee shop to be the appellant, and as the appellant was not present, he handed the notice to someone in the premises with instructions to hand it to him. As to why the notice was issued against the appellant, the Inspector explained that action is normally taken against the holder of the eating house licence. In the context he said that there are two

kinds of licences, an eating house licence and a food stall licence. Where there are several food stalls in a coffee shop, the operators of the stalls would each have a food stall licence. He further explained that where his investigations showed that it was a food stall holder who had committed the offence of placing tables and chairs outside the food establishment, then he would issue the notice to that person, and not to the holder of the eating house licence.

The appellant claimed possession of the premises under section 15(1)(h) of the Control of Rent Act (Cap. 266) (the Act) which reads as follows:

"Where the tenant or any other person occupying the premises under him has knowingly committed a breach of any written law regulating any business carried on upon the premises or of any provision of the Environmental Public Health Act or the Local Government Integration Act or of any regulation made thereunder affecting the premises which exposes the landlord to any penalty, fine or forfeiture."

At the close of the appellant's case, counsel for the respondent elected not to call evidence for the defence and made a submission of no case to meet. At the end of the hearing the learned District Judge having reserved judgment dismissed the appellant's claim and hence this appeal.

One submission for the appellant was that the learned District Judge was wrong in law to look behind the convictions of the appellant: that in a claim for possession under section 15(1)(h) of the Act, where there is a conviction, the facts that support the conviction must be presumed, and, the plaintiff need not adduce evidence to prove facts leading to the conviction: *Tay Sai Hiang* v. *Tan Ee Keok*.[1]

Counsel for the respondent, however, submitted that the evidence of the appellant that he did not commit the offences, and that he had only pleaded guilty because he was the person issued with the notices, was evidence in rebuttal of his own case, evidence that was in favour of the respondent. He supported the learned District Judge who held, and I quote from the grounds of judgment:

"...having regard to the authorities, a landlord can only be said to be exposed to conviction when facts exist which, if proved, would lead to his conviction. On the evidence adduced before the court, there was none which would support the conviction of the plaintiff."

The other submission for the appellant, in effect two-pronged, was that the learned District Judge was wrong in law and in fact in holding that the breaches of the regulations had (a) not affected the premises and (b) not exposed the appellant, *qua* landlord, to a fine. The District Judge found, in addition to being landlord of the premises, the appellant was also the holder of an eating house licence; that the third notice was issued to the appellant as licensee of the food establishment and not as landlord of the premises; (on an assumption as there was no evidence) that the two other notices were not issued to the appellant as landlord of the premises. He held therefore that the breaches of the regulations had not affected the premises, nor had they exposed the landlord, *qua* landlord, to a fine. He concluded that the appellant had not brought his case within the exception of section 15(1)(h) of the Act which entitled him to recover possession of the premises from the respondent.

From what has been said, though there were three questions raised, there is only one issue for decision. It is: had the appellant, at the close of his case, made out a *prima facie* case, which, in the event, the respondent not having given evidence, entitled the appellant to judgment as claimed? The answer would depend on whether the appellant had, on a balance of probabilities, proved the three ingredients in section 15(1)(h) of the Act. They are:

(a) Breach of certain written laws by the tenant or someone occupying the premises under him;

(b) Breach affecting the premises; and

(c) Breach which exposes the landlord to a penalty, fine or forfeiture.

As regards ingredient (a), there is no dispute on the facts that the respondent as operator of the coffee shop, and/or, one or more of the stall holders occupying foodstalls in the premises under the respondent, had committed breaches of regulations made under the Environmental Public Health Act.

Next, as regards ingredient (b), of breach "affecting the premises", it is to be noted that the said phrase applies to all the written laws referred to in section 15(1)(h) of the Act which can be conveniently divided as follows:

(i) any written law regulating any business carried on upon the premises;

(ii) any provision of the Environmental Public Health Act;

(iii) any provision of the Local Government Integration Act; and

(iv) any regulation under (ii) or (iii) above.

Thus separated it is to be observed that whilst under (i) above, "affecting the premises" is restricted to written laws governing "any business carried on upon the premises", the said restriction is not found in the laws referred to in (ii), (iii) and (iv). In other words, the legislature intended that as regards the laws in (ii), (iii) and (iv), they govern any activity both within and outside the premises.

The question therefore is: were the breaches of the regulations under the Environmental Public Health Act, of permitting the footway of the premises to be obstructed with tables and chairs, or placing the same outside the premises in connection with the sale of food, breaches "affecting the premises"? I am not persuaded by counsel for the respondent that they were not. Each of the three notices against the appellant specified that the place of offence was the premises, and, stated that the nature of the offence was related to the premises. The charges in the three notices undoubtedly related to the business carried on upon the premises. In my judgment the learned District Judge was wrong in holding that the breaches of the regulations had not affected the premises.

Finally, there is ingredient (c), that the breach must expose the landlord to a penalty, fine or forfeiture. One matter argued under this ingredient was

on the ruling of the District Judge that the breaches of the regulations must have exposed the appellant to a fine *qua* landlord, and as they had not, he was not entitled to recover possession of the premises under section 15(1)(h) of the Act.

I have had difficulty in understanding the ruling of the learned District Judge. The reasoning appears to be founded on an assumption that the exposure of the landlord to any penalty, fine or forfeiture must be only in that capacity i.e. that of landlord. It would follow, if that reasoning is right, that an exposure of the landlord, say to a fine in his capacity as owner of the premises will not entitle him to recover possession of the premises under the said provision. I cannot accept such a proposition. It is not supported by any authority. To the contrary, in the reported cases the plaintiffs, landlords, had alleged exposure to fine in their capacity as owners of the premises: see for examples: *Ho Tong Cheong & Ors.* v. *Oversea-Chinese Banking Corporation Ltd.*;[2] *Tay Sai Hiang* v. *Tan Ee Keok, supra.*

Again, if one has to read "landlord" to mean "in the capacity of landlord", then logically, one has also to read "tenant" in the said provision, to mean "in the capacity of tenant".

Altogether, I am satisfied that the construction of the provision contended for by counsel for the respondent will, if not make nonsense of it, render it wholly nugatory. In my judgment, the expressions "landlord" and "tenant" in the provision bear the ordinary and natural meaning, and nothing is to be read into them except the defined meanings given to them in section 2, the interpretation section of the Act. The defined meanings are:

> "'landlord' means the landlord of premises in respect of which a tenancy exists and includes the landlord of a statutory tenant and in the case of a sub-tenancy a tenant who sublets the premises or any part thereof;
>
> 'tenant' means the tenant of premises in respect of which a tenancy exists and includes a statutory tenant and in the case of a sub-tenancy a sub-tenant to whom the premises or part thereof is sublet."

In concluding this topic, it is relevant to refer to a passage in *Ho Tong Cheong & Ors.* v. *Oversea-Chinese Banking Corporation Ltd., supra,* a decision of the Federal Court in Singapore. Buttrose J. (Wee Chong Jin C.J., and Tan Ah Tah F.J. concurring) in delivering the judgment of the court endorsed the trial judge's view on the interpretation of the said provision. It is to be noted that in the passage, the expressions I am considering are given an ordinary and natural meaning. Buttrose J. said:

> "The object of the Rent Control Ordinance is to fetter landlords and take away their common law rights and not to afford the tenant a statutory defence. In my view immediately a tenant commits a breach of any written law regulating any business carried on upon the premises or of any provision of the Municipal Ordinance or any Rule or By-law made thereunder affecting the premises he removes the fetter on the landlord's right to recover possession and he loses the protection of the Ordinance and the landlord's right of action for recovery of possession arises."

There remains only for me to deal with the submission for the appellant that the learned District Judge was wrong to look behind the convictions of the appellant and to hold that there was no evidence to support them. Counsel for the appellant relied on a *dictum* of Wee Chong Jin C.J. in *Tay Sai Hiang* v. *Tan Ee Keok, supra,* another decision of the Federal Court in Singapore.

In that case the landlord made a claim for the recovery of possession of premises under section 15(1)(h) of the then Control of Rent Ordinance. The tenant had contravened section 144(7) of the Municipal Ordinance by knowingly constructing three water tanks on the premises without an approved plan. As a result, the landlord, as owner, was convicted and fined for the offence. The trial judge held that the landlord had not discharged the onus of proving that the breach of the Municipal Ordinance had exposed her to a fine because she had failed to show that the complaint against her was made within the time specified in section 392 of the Municipal Ordinance. On appeal by the landlord, in delivering the judgment of the Court, Wee Chong Jin C.J. said:

> "...[O]nce a person has proved that he has been convicted of an offence it must be assumed until the contrary is proved, that all the facts necessary which, if proved, would lead to a conviction, have been proved to the satisfaction of the court trying that person in respect of that offence."

The answer of counsel for the respondent was that the *dictum* had no application to the facts in the present appeal as they went beyond the facts that were before the Federal Court. He said that in this appeal the evidence of the appellant that he did not commit the offences and had pleaded guilty for convenience were evidence in rebuttal of his own convictions. It was urged upon me that as the learned District Judge had accepted that evidence (he held them to be admissions which they are not), it could not longer be assumed that all the facts existed that led to the convictions of the appellant.

On the facts, the argument for the respondent is an attractive one. It had persuaded the learned District Judge to rule in his favour. As a matter of law, however, I cannot accede to it. One reason is the appellant is estopped from denying the convictions including the facts relating to the convictions. A more cogent reason is it would be contrary to public policy for a person who is convicted of an offence, be it on a plea of guilty or after trial, to dispute the conviction or the facts thereof, except, where there is an appeal on it. It was therefore not open to the appellant at the hearing in the District Court to give evidence, so it is said, in rebuttal of his convictions. In the view I take, any such evidence ought to be excluded, and if admitted, ought to be disregarded. Had that been the approach, at the close of the appellant's case, there would be no evidence before the learned District Judge for him to look behind the convictions of the appellant; and, on the authority of *Tay Sai Hiang* v. *Tan Ee Keok, supra,* he would have held that the appellant had on a balance of probabilities established a *prima facie* case.

What I have said is sufficient to dispose of the last topic. I want to however say a few words on the facts, on the evidence of the appellant that emerged in his cross-examination that he did not permit nor did he himself place tables and chairs as alleged in the charges. It was this evidence that led the learned

District Judge to conclude that there was no evidence that would support the convictions of the appellant. I am not satisfied that that evidence nullifies the convictions. At best it is the kind of evidence the appellant would have given had he claimed trial to the charges in the Magistrate's Court. It would then be for the Magistrate, on an examination of the whole of the evidence, to come to a decision. Such evidence will not be before a court hearing an action for recovery of possession, under section 15(1)(h) of the Act. This is another reason why, on the facts too, it would be wrong to look behind the convictions of the appellant.

For all these reasons, I hold that the appellant had, at the close of his case, made out a *prima facie* case, which, in the event, the respondent not having given evidence, entitles the appellant to judgment. There will be order for possession as claimed. The appeal is allowed with costs here and below.

Appeal allowed.

Solicitors: *Lee & Lee; Mak, Pala, Selvadurai & Tan.*

DAUD BIN SALLEH v. THE SUPERINTENDENT, SEMBAWANG DRUG REHABILITATION CENTRE

[O.C.J. (Choor Singh J.) October 27, 1980]

[Singapore — Originating Motion No. 47 of 1980]

Practice and Procedure — Application for Habeas Corpus — Detention of drug addict — Exercise of discretion by Director of Central Narcotics Bureau — Whether power had been exercised mala fide — Scope of Misuse of Drugs Act, 1973, s. 33(1) & (2).

Misuse of Drugs — Discretionary powers of Director — Whether power had been exercised mala fide — Scope of s. 33(1) & (2) of Misuse of Drugs Act, 1973.

The appellant in this case, a gardener, lived with his father. On May 27, 1980 he was arrested by officers from the Central Narcotics Bureau (hereinafter referred to as CNB). He was taken to Joo Chiat Police Station where he was detained in a lock-up. The next day he was taken to CNB and from there to the Sembawang Drug Rehabilitation Centre where he was detained and given the "cold turkey" treatment. He was seen by a doctor on the next two consecutive days but at no time was any sample of his urine taken for analysis. Later he was informed that he would be detained for three years.

The applicant contended that he had been unlawfully detained. He applied for a writ of *Habeas Corpus.*

Held, allowing the application: (1) when a person who has been deprived of his liberty challenges the detention by a petition for *habeas corpus,* it is for the authority who has detained him to show that the person has been detained in exercise of a valid legal power. Once it is shown, it is for the *détenu* to show that the power has been exercised *mala fide;*

(2) the court cannot undertake an investigation as to the sufficiency of the material which made the Director to "reasonably suspect" the applicant. Once the Director makes an order requiring a person, whom he reasonably suspects to be a drug addict, to be medically examined, the only question left is whether the Director has exercised his power under section 33(1) of the Misuse of Drugs Act, 1973 in good faith; in the present case there was no allegation of bad faith on the part of the Director;

(3) the power granted to the Director under section 33(2) of the Misuse of Drugs Act, 1973 to require a person to be admitted to an approved institution for treatment or rehabilitation is subjective of his satisfaction which must be based on the evidence prescribed by the statute;

(4) before the Director can exercise his power under the aforesaid section 33(2) the person suspected to be a drug addict must be medically examined or observed or subjected to a urine test;

(5) when a power has been confided to a person in circumstances indicating that trust is being placed in his individual judgment and discretion, he must exercise that power personally unless he has been expressly empowered to delegate it to another. An authority entrusted with a discretion must not in the purported exercise of its discretion, act under the dictation of another body or person;

(6) the role of the court is limited to ensuring that the Director's discretion has been exercised according to law. But where, as in the present case the applicant had satisfied the court that the Director did not have before him any factual evidence on which he could have made up his own mind whether or not the applicant was a person who required treatment at an approved institution, the order made by the Director could not be sustained and must be set aside.

Case referred to:-

(1) *R.* v. *Halliday, Exp. Zadig* [1917] A.C. 260, 269.

ORIGINATING MOTION.

J.B. Jeyaretnam for the applicant.

Sowaran Singh (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Choor Singh J.: This is an application by Daud bin Salleh, for a writ of *habeas corpus.*

The affidavit filed by the applicant states that he is a Singapore citizen; that before his arrest he was staying with his father at No. 20-H, Lorong Engku Aman, Singapore and that he was employed as a gardener by the Housing and Development Board.

The facts according to the applicant are that he was arrested by officers from the Central Narcotics Bureau on the afternoon of May 27, 1980. He was taken to Joo Chiat Police Station where he was detained in a lock-up. The following day he was taken to the Central Narcotics Bureau at Pearl's Hill and from there to the Sembawang Drug Rehabilitation Centre where he was detained and given the "cold turkey" treatment. He was seen by a doctor on the next two consecutive days but at no time was any sample of his urine taken for analysis. Later he was informed that he would be detained for three years.

The applicant contended that he had been unlawfully detained. When a person who has been deprived of his liberty challenges the detention by a petition for *habeas corpus,* it is for the authority who has detained him to show that the person has been detained in exercise of a valid legal power. Once that is shown, it is for the détenu to show that the power has been exercised *mala fide* or improperly.

Counsel for the respondent relies on the provisions of sections 33(1) and 33(2) of the Misuse of Drugs Act, 1973 which provide as follows: —

33. — (1) The Director of the Central Narcotics Bureau may require any person whom he reasonably suspects to be a drug addict to be medically examined or observed by a Government medical officer or a medical practitioner.

(2) If as a result of such examination or observation or as